IN THE HIGH COURT OF JUDICATURE A MADRAS

DATED: 30/04/2003

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

W.P.NO.469 OF 1996

Duraipandian .. Petitioner

-Vs-

1. The District Collector,
Nagai Q.M. District at
Nagapattinam.

2. The Special Tahsildar,
Land Acquisition Adi Dravidar
Department, now known as
Social Welfare Department,
Mayiladuthurai. .. Responents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorarified Mandamus as stated therein.

!For Petitioner : Mr.A. Muthukumar

^For Respondents : Mrs.N.G. Kalaiselvi,
Special Govt. Pleader

:J U D G M E N T

In this writ petition, the petitioner has challenged the declaration under Section 6 of the Land Acquisition Act and the subsequent award dated 1.12.1982 and 25.3.1983 respectively.

2. The disputed properties appertaining to S.No.183/3 and 184/1B belonged to one Ambujavalli Ayal, wife of Thillai Govindaraja Odayar. On the death of the owner, the properties were partitioned by a registered document No.2567 of 1960 dated 6.4.1960. As per the aforesaid partition, the disputed property fell to the share of one T. Javaveeraraja Odayar and it was indicated that after the death of said allottee, the property would devolve on the heirs of his sister Jalajaganthi Ayal. The petitioner is the only heir of the aforesaid Jalajaganthi and other two sisters of T. Jayaveeraraja Odayar did not have any issue. In respect of disputed property, ceiling proceedings had been initiated against T. Jayaveeraraja Odayar, and after his death on 15.4.1971, notices were issued to the present petitioner. Suit in O.S. No.40

of 1978 was filed by some other relatives for partition and such suit was resisted by the present petitioner on the ground that the property which had been allotted to T. Jayaveeraraja Udayar has devolved on the present petitioner after the death of Jayaveeraraja Udayar. The aforesaid contention was accepted by the trial court and has been confirmed by the High Court in AS.No.328 of 1981 on 27.11.1990. It has been asserted that a part of the disputed land was used as burial ground. It has been further asserted that maternal aunt of the petitioner was also buried in the disputed land in 1994. It is further claimed that in December, 1995, while the petitioner and his family members were offering guru pooja, the Village Administrative Officer and Menial informed the petitioner that the property had been acquired by the Government for providing house sites. On the basis of such information, the petitioner after further enquiry came to know that the impugned land acquisition proceedings had been initiated in the year 1982 and award had been passed in the year 1983 under the provisions of the Land Acquisition Act, 1894. It has been contended that the land acquisition proceedings had been initiated against Jayaveeraraja Odayar and his brothers out of whom two persons, Jayaveeraraja Odayar and his brother Thillai Muthappa Andiyappa Odayar had died long prior to the initiation of the land acquisition proceedings. It has been asserted that no notice had been issued to the present petitioner and the land acquisition proceedings are void.

3. In the counter it has been indicated that some relations of the petitioner had appeared in the land acquisition proceedings and nothing had been intimated about the death of Jayaveeraraja Odayar or any other person. It has been further indicated that even though partition had been effected under a registered deed, land acquisition proceedings were initiated against the persons, whose names were found in the revenue records and, therefore, the absence of personal notice to the petitioner is of no consequence.

4. Initiation of proceedings for acquisition of land under Section 4 of the Land Acquisition Act may not be bad at that stage even if some of the persons against whom such proceedings is initiated are dead, because the authority may not be aware of their death. However, once proceedings is initiated, thereafter the procedure contemplated under Section 5-A of the Act is required to be followed which contemplates issuance of notice against the persons who are known to have interest in the land. The proceedings had been initiated inter alia against Jayaveeraraja Odayar. The fact that he was dead in 1971 as evident by the certificate issued by the appropriate authority is not in dispute. It is not understood as to how notice contemplated under Section 5-A of the Act read with Rule 4(b) of the rules was served. Similarly it is not understood as to how the notice relating to award was served when admittedly the person concerned was dead. Moreover, in the ceiling proceedings itself, which was also started by the revenue authorities after the death of the previous owner, notice had been issued to the present petitioner. Therefore, the death of the previous owner must be taken to be within the knowledge of the revenue authorities. Even though initiation of proceedings against a dead person cannot be vulnerable on that score alone, the subsequent proceedings may become vulnerable when the notice of award had been purportedly served on the dead person. Therefore, the land acquisition and the subsequent award must be taken to be invalid.

5. It is contended that the award was passed in 1983 and in that distant point of time the petitioner should not be permitted to challenge such land acquisition proceedings after such long delay.

6. Learned counsel for the State has placed reliance upon the decision of the Supreme Court reported in STAR WIRE (INDIA) LTD. Vs. STATE OF HARYANA AND OTHERS ((1996) 11 SCC, 698) and MUNICIPAL COUNCIL, AHMEDNAGAR & ANR. Vs. SHAH HYDER BEIG & ORS. (2000(1) Supreme, 146).

7. In the first cited case, the notification under Section 4(1) of the Land Acquisition Act was published on 1.6.1976, the declaration under Section 6 of the Act was published on 16.02.1977 and the award had been passed on 3.7.1981 and even the reference had subsequently been finalised. The petitioner in the said case had purchased the property after notification under Section 4(1) had been issued, but he challenged the acquisition in January, 1994. It was observed that the petitioner had no right to the property as he had purchased the same after Section 4(1) notification was published and therefore his title was a void title. The Court also observed that the writ petition filed after a long lapse of time was not maintainable.

8. In the subsequent decision relied upon by the learned Special Government Pleader, the notification had been issued in 1971, the award had been passed in 1976 and possession was also taken in the year 197 6, but the writ petition was filed in 1992, after the expiry of 21 years from the date of 4(1) notification and 16 years from the date of taking over possession. In such circumstances, the Supreme Court set aside the order of the High Court and held that the writ petition was liable to be rejected on the ground of laches.
9. In the present case, the petitioner was vested with the right much prior to Section 4(1) notification and even in the ceiling proceedings, the petitioner had been recognised as the owner. In the counter, it has been indicated that possession was purported to be taken on 23.02.1995. In such circumstances, it cannot be said that the writ petition filed in 1996 suffers from laches.

10. Learned counsel appearing for the State has also contended that in the Land Acquisition proceedings, objection had been raised by the other persons and they have not indicated about the right of the petitioner over the acquired land. Merely because some other persons had not vindicated about the right of petitioner cannot stand as a bar against the claim of the petitioner unless it is shown that the petitioner is either claiming through those persons or those persons were the agent of the petitioner. On the other hand, the records indicate that litigations were pending between the petitioner and such other persons. Obviously, it was not expected of them to disclose about any interest of the petitioner about the disputed land.

11. For the aforesaid reasons, the writ petition is allowed and the land acquisition proceedings so far as it

relates to the petitioner's property, is quashed. It is however made clear that if the land is required, it would be open to the competent authority to

initiate land acquisition proceedings in accordance with law. No costs.

Index-Yes.
Internet-Yes.

Dpk/Sk
To
1. The District Collector,
Nagai Q.M. District at
Nagapattinam.

2. The Special Tahsildar,
Land Acquisition Adi Dravidar
Department, now known as
Social Welfare Department,
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